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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 325

V. F. BOND and AUDREY A. BOND, *Petitioners*

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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V. F. Bond and Audrey A. Bond, the petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit in the above entitled cause entered April 9, 1956.

OPINIONS BELOW

The opinion of the Court of Appeals, 232 Fed. 2nd 822, is printed at page 2a of this petition. The opinion of the Tax Court of the United States and its findings of fact appear in the record (R. 175a-182a).

JURISDICTION

The judgment of the Court below was entered April 9, 1956 (App. B, page 10a *infra*). The time for filing this petition was extended to August 20, 1956 by order of the Hon. Hugo L. Black, Associate Justice of the Supreme Court of the United States, entered July 9, 1956 (App. A, page 1a *infra*). Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

I. Whether the judgment and opinion of the Court below affirming the judgment of the Tax Court is in conflict with the applicable decisions of this Court in that,

(a) It sustained the determination of the petitioners' net worth as of December 31, 1940, the base year, notwithstanding the fact that such computation did not include all assets on hand as of that date. It excluded inventory in the sum of $10,000.00 reflected by petitioners in their income tax return filed for the calendar year 1940.

(b) It sustained the imposition of the 50% penalty based upon an incomplete net worth computation.

(c) In affirming the decision of the Tax Court on the issue of fraud the Court below did so solely upon an increase in petitioners' net worth without any evidence of concealment or subterfuge and, therefore, is in conflict with the decision of the Sixth Circuit in the case of *Wiseley* v. *Commissioner*, 185 F.2d 203 (1950) reversing 13 T. C. 253.

STATUTES

The applicable provisions of the Internal Revenue Code (1939) are herein set forth.

STATUTES INVOLVED

Section 22(a), Internal Revenue Code (1939):

> "(a) General Definition.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. . . . "

Section 41, Internal Revenue Code (1939):

> "The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net

income shall be computed on the basis of the calendar year."

Section 113(a), Internal Revenue Code (1939):

"(a) Basis (Unadjusted) of Property.—The basis of property shall be the cost of such property; except that— . . . "

Section 133(b), Internal Revenue Code (1939):

"(b) Adjusted Basis.—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided. . . . "

Section 114(a), Internal Revenue Code (1939):

"(a) Basis for Depreciation.—The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property."

Section 275(a), Internal Revenue Code (1939):

"(a) General Rule.—The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period."

Section 275(c), Internal Revenue Code (1939):

"(c) Omission from Gross Income.—If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may

be begun without assessment, at any time within 5 years after the return was filed"

Section 293(b), Internal Revenue Code (1939):

"(b) Fraud.—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612 (d) (2)."

STATEMENT

On March 8, 1950, the Commissioner of Internal Revenue issued a statutory notice of deficiency imposing the assessment of additional income taxes and the 50% fraud penalty predicated upon an increase in petitioners' net worth for the years 1941 through 1947, inclusive. The deficiencies and the fraud penalty for each of the years are reflected in the following tabulation:

Docket No. 28860

Year	Deficiency	50% Penalty
1941	$ 3,153.07	$ 1,576.54
1942	1,812.26	906.13
Total	$ 4,965.33	$ 2,482.67

Docket No. 28859

Year	Deficiency	50% Penalty
1943	$11,263.85	$ 5,631.93
1944	30,098.15	15,049.08
1945	38,517.07	19,258.54
1946	29,705.71	14,852.86
1947	23,006.36	11,503.18
Totals	$132,591.14	$66,295.59

As the result of certain adjustments to the original statutory notice of deficiency, the deficiencies and penalties which were involved before the Tax Court are as follows:

Year	Deficiency	50% Penalty
1942	$ 7,890.65	$ 3,945.33
1943	11,192.01	5,596.01
1944	30,656.79	15,328.40
1945	39,492.83	19,746.42
1946	30,376.82	15,188.41
1947	44,927.30	22,463.65

The construction of the net worth giving rise to the foregoing deficiencies was based upon information reflected by the petitioners in their income tax returns (R. 167a).

Certain assets known to be in existence as of December 31, 1939 were omitted from the base year (1940) in determining the increase in petitioners' net worth (R. 156a). The exclusion of these assets had the effect of depressing the petitioners' net worth by the sum of $15,625.90 in the base year (1940) (R. 152a-153a).

REASONS FOR GRANTING WRIT

1. In affirming the deficiencies, against the petitioners, based upon a net worth which excluded substantial assets from the base year, the judgment below is in conflict with the applicable decisions of this Court expressed in the case of *Holland* v. *U. S.*, 348 U.S. 121-132.

2. Based upon the erroneous net worth computation, and without evidence of concealment or fraudulent conduct, the Court below sustained the imposition of the 50% fraud penalty for each of the years 1942 to

1947, inclusive, in the total amount of $81,471.66. This is contrary to the uniform Federal decisions and is in conflict with the decision of the United States Court of Appeals for the Sixth Circuit in *Wiseley* v. *Commissioner,* 185 F. 2d 203 (1950) reversing 13 T. C. 253.

3. Assets consisting of improvements to real estate totaling $15,625.90 were excluded from the base year of 1940 and an asset in the form of inventory reflected by petitioners in their income tax return for the year 1940 in the sum of $10,000.00 was likewise excluded.

4. The construction of the net worth, upon which the deficiencies were determined, was accomplished by employing the information contained in the petitioners' income tax returns for each of the years in question. The only information appearing in the net worth computation not obtained from petitioners' income tax return was that of petitioners' bank balance.

5. For the years 1941 to 1945, inclusive, there was no omission of specific items of income except that of a check in the approximate amount of $2,400.00 received by the petitioners from Standard Oil Company in 1944 (R. 165a).

CONCLUSION

When consideration is given to all the factors contained in the record, justice will be reproached should the judgment of the Court below in sustaining the imposition of fraud be upheld without any evidence which clearly and convincingly establishes fraudulent conduct on the part of the petitioners.

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